

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Michael J. Sundermeyer et al.

Application No.: 10/690,214

Confirmation No.: 2346

Filed: October 21, 2003

Art Unit: 2178

For: WEB SITE MANAGEMENT LIFECYCLE

Examiner: M. J. Ludwig

REPLY BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: BOARD OF PATENT APPEALS AND INTERFERENCES

Dear Sir:

As requested under § 41.41(a)(1), this Reply Brief is filed within two months of the Examiner's Answer dated May 31, 2007. No fee is required. This brief contains items under the following headings:

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I. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 31 claims pending in application which are identified as claims 1-31.

B. Current Status of Claims

1. Claims canceled: None
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1-31
4. Claims allowed: None
5. Claims rejected: 1-31

C. Claims On Appeal

The claims on appeal are claims 1-31

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. First Ground of Rejection

Claims 1-19 are rejected under 35 U.S.C. § 102(b) as being anticipated by GlobalScape, “CuteFTP Pro Technical Overview,” White Paper, May 22, 2001 (hereinafter *CuteFTP*).

B. Second Ground of Rejection

Claim 20 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Altova Inc. & Altova GmbH, “XML Spy 4.0 Manual,” September 10, 2001 (hereinafter *XML Spy*).

C. Third Ground of Rejection

Claims 21-31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *XML Spy* in view of *CuteFTP*.

III. ARGUMENT

Appellant respectfully traverses the outstanding rejections of the pending claims and requests that the Board reverse those rejections in light of the remarks contained in Appellant's Appeal Brief of January 26, 2007 (*Appeal Brief*) and in this Reply Brief. As in the *Appeal Brief*, Appellant argues many of the rejected claims separately herein. These separately argued claims do not stand or fall together. *See* 37 C.F.R. § 41.31(c)(1)(vii).

Appellant hereby reasserts the arguments previously presented in the *Appeal Brief*, and particularly those with respect to independent claims 1, 11, 20, and 21. For the sake of brevity, however, Appellant does not restate those same arguments herein, but instead submits the following supplemental remarks in response to the Examiner's Answer.

A. First Ground of Rejection (Claims 1-19)

1. Dependent Claims 2 and 12

Dependent claim 2 recites "scanning said Web page for page-dependent related files prior to said automatically downloading." Claim 12 recites similar elements. In response to Appellant's previous remarks, the Examiner states that:

Appell[ee] believes the scheduling properties taught by [CuteFTP] which utilizes the continuous mirroring of a particular directory provides a means for scanning web pages for page-dependent related files prior to said automatically downloading.

Examiner's Answer at p. 20. As previously asserted, however, performing directory mirroring of an entire folder is very different from scanning a web page stored within a folder for related files. In a generic scenario, one or more related files may be in a different folder than the web page and one or more unrelated files may be in the same folder as the web page. Merely copying an entire folder is not the same—and it does not accomplish the same results—as scanning a web page for page-dependent related files prior to downloading. For example, copying an entire folder may cause non-related files present in that folder to be unnecessarily copied, while simultaneously missing related files that were placed in a different folder. Again, the "scheduling properties" of *CuteFTP* use continuous mirroring of

entire folders, and do not scan web pages located within those folders for related files prior to mirroring.

If the Examiner is implying that the scanning of a web page for page-dependent related files is inherent in *CuteFTP*'s directory mirroring, Appellant notes that:

[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.

Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). At least for the reasons submitted above, scanning a web page for page-dependent related files does not necessarily flow from the mirroring or copying an entire directory altogether. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 102(b) rejection of record with respect to claims 2 and 12.

2. Dependent Claims 3 and 13

Dependent claim 3 recites “scanning said edited source file for modified page-dependent related files prior to said automatically publishing.” Claim 13 recites similar elements. In response to Appellant’s previous remarks, the Examiner states that:

[*CuteFTP*] teaches a check of local files, scan, for changes to publishing. See *CuteFTP*, page 16, ‘folder monitor’.

Examiner’s Answer at p. 20. First, Appellant notes that page 16 of *CuteFTP* is silent regarding a “folder monitor.” In fact, Appellant believes that the Examiner may be instead referring to page 16 of another document entitled “CuteFTP Pro User’s Guide, Advanced File Transfer fro the Security-Minded Professional.” This is not the same reference as *CuteFTP*, and therefore the 35 U.S.C. § 102(b) rejection or record is improper.

Even assuming, *arguendo*, that *CuteFTP* does in fact teach or suggest a “folder monitor,” Appellant reasserts that merely monitoring an entire folder is very different from scanning an edited source file within a folder for modified page-dependent related files

(which may not even be within the same folder). Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 102(b) rejection of record with respect to claims 3 and 13.

3. Dependent Claims 5 and 14

Dependent claim 5 recites “translating local links to said added page-related files to reflect a location of said added page-related files on said file server.” Claim 14 recites similar elements. In response to Appellant’s previous remarks, the Examiner states that:

[a]utomatically updating a web page is a sufficient way to publish source files to the file transfer server associated with the web site including said related files associated with said display of said web page.

Examiner’s Answer at p. 20. As a preliminary matter, Appellant points out that the Examiner’s statement does not amount to an assertion that *CuteFTP* teaches or suggests translation of local links to added page-related files to reflect their location on a file server. Furthermore, Appellant asserts that *CuteFTP* does not teach or suggest translating local links to added page-related files to reflect a location of the added page-related files on a file server. Again, if the Examiner is implying that the translation of local links is inherent in *CuteFTP*’s directory mirroring, Appellant notes that:

[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.

Ex parte Levy, 17 USPQ2d at 1464 (emphasis in original). Merely “updating a webpage” does not require that there be “added page-related files,” much less that there be a translation of local links to added page-related files to reflect a location of the added page-related files on a file server. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 102(b) rejection of record with respect to claims 5 and 14.

4. Dependent Claims 6 and 15

Dependent claim 6 recites “mapping addresses of said edited source file and said related files associated with said display of said Web page to an address location commensurate with said file transfer server.” Claim 15 recites similar elements. In response to Appellant’s previous remarks, the Examiner maintains that:

[*CuteFTP*] provides a method of mirroring which makes the content of the remote drive exactly like the contents of the local drive, vice versa, or both.

Examiner’s Answer at p. 21. Again, simply making the content of a remote drive identical to the content of a local drive is not the same as mapping addresses of an edited source file and related files associated with the display of a web page to an address location commensurate with a file transfer server. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 102(b) rejection of record with respect to claims 6 and 15.

5. Dependent Claims 10 and 19

Dependent claim 10 recites “stripping said modifications to said one or more elements from said edited source responsive to said checking; and updating said database with said modifications.” Claim 19 recites similar elements. In response to Appellant’s previous remarks, the Examiner states that:

[*CuteFTP*’s] scanning the web page for the files to be updated and the folder synchronization . . . provides a means of stripping a modification an updating a web page

Examiner’s Answer at p. 21. First, *CuteFTP* does not teach or suggest “scanning the web page for the files to be updated,” as contended by the Examiner. Second, scanning a web page for files to be updated is not the same as stripping modifications to one or more elements from an edited source and updating a database with the modifications. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 102(b) rejection of record with respect to claims 10 and 19.

B. Second Ground of Rejection (Claim 20)

During the prosecution of this case, claim 20 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over *XML Spy*. See e.g., *Examiner's Answer* at pp. 11-12. The Examiner has also confirmed that the grounds of rejection to be reviewed on appeal as stated by Appellant in the *Appeal Brief* were correct. *Id.* at p. 2. Nonetheless, the Examiner now inconsistently relies upon a combination of *XML Spy* with *CuteFTP* in support to the rejection of claim 20. *Id.* at pp. 21 and 22. Appellant respectfully asserts that the Examiner's newly raised grounds of rejection on appeal is improper, and respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claim 20.

Furthermore, Appellant notes that during the pendency of this appeal, the Supreme Court further clarified the role of "motivation" in deciding whether a claim is invalid under 35 U.S.C. § 103(a). Particularly, the Supreme Court has stated that it is "important [for an examiner] to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l Co. v. Teleflex, Inc.*, No. 04-1350, slip op. at 14 (U.S. April 30, 2007). Indeed, the Court indicated that there should be an "explicit" analysis regarding "whether there was an *apparent reason* to combine the known elements *in the fashion claimed* by the patent at issue." *Id.* (emphasis added). Finally, the Court did not totally reject the use of the Federal Circuit's "teaching, suggestion, or motivation" test as a factor in the obviousness analysis. *Id.* at 14-15.

In an effort to address the Examiner's newly raised rejection of claim 20 based upon a combination of *CuteFTP* with *XML Spy*, Appellant points out that *CuteFTP* is a file transfer protocol (FTP) client designed to allow the transfer of electronic files across a network, whereas *XML Spy* is an extended markup language (XML) editor designed to allow the creation of XML documents. See e.g., *CuteFTP* at p. 1 and *XML Spy* at p. 19. There is no apparent reason to combine an FTP client with an XML editor, particularly when these references are considered in their entirety. See *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986). Appellant asserts that a person of ordinary skill in the art would not look to an XML editor for features to be incorporated into an FTP client or vice-versa. Therefore, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claim 20.

C. Third Ground of Rejection (Claims 21-31)

Claims 21-31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *XML Spy* in view of *CuteFTP*. *Examiner's Answer* at p. 12. As noted above with respect to claim 20, there is no apparent reason why a person of ordinary skill in the art would be inclined to combine an FTP client with an XML editor. At least for this reason, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claims 21-31. Furthermore, the combination of *Cute FTP* with *XML Spy*, even if proper, does not teach or suggest every element recited in several of the claims as discussed below.

1. Dependent Claim 22

Dependent claim 22 recites “code for analyzing said Web page for page-dependent related files.” The Examiner’s response contains similar arguments as those previously presented. *Examiner's Answer* at pp. 23 and 24. Again, Appellant respectfully asserts that merely performing directory mirroring of an entire folder is very different from scanning a Web page for page dependent files. The Examiner does not rely upon *XML Spy* as teaching or suggesting these elements, and Appellant asserts that it does not. Therefore, the combination of *Cute FTP* with *XML Spy*, even if proper, does not teach or suggest every element recited in claim 22. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claim 22.

2. Dependent Claim 23

Dependent claim 23 recites “scanning said edited source file for modified page-dependent related files prior to said automatically publishing.” The Examiner’s response contains similar arguments as those previously presented. *Examiner's Answer* at p. 24. Again, *CuteFTP* does not scan edited source file for modified page-dependent files. The Examiner does not rely upon *XML Spy* as teaching or suggesting these elements, and Appellant asserts that it does not do so. Therefore, the combination of *Cute FTP* with *XML Spy*, even if proper, does not teach or suggest every element recited in claim 23. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claim 23.

3. Dependent Claim 24

Dependent claim 24 recites “code for checking said edited source file for modified page-dependent related files prior to said automatically publishing.” The Examiner’s response contains similar arguments as those previously presented. *Examiner’s Answer* at p. 24. Again, *CuteFTP* does not check an edited source file for modified page-dependent related files prior to automatic publishing. The Examiner does not rely upon *XML Spy* as teaching or suggesting these elements, and Appellant asserts that it does not. Therefore, the combination of *Cute FTP* with *XML Spy*, even if proper, does not teach or suggest every element recited in claim 24. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claim 24.

4. Dependent Claim 26

Dependent claim 26 recites “code for translating local links to said added page-related files to reflect a location of said added page-related files on said file transfer server.” The Examiner’s response contains similar arguments as those previously presented. *Examiner’s Answer* at p. 24. Again, *CuteFTP* does not disclose scanning a Web page for files to be updated. The Examiner does not rely upon *XML Spy* as teaching or suggesting these elements, and Appellant asserts that it does not. Therefore, the combination of *Cute FTP* with *XML Spy*, even if proper, does not teach or suggest every element recited in claim 26. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claim 26.

5. Dependent Claim 27

Dependent claim 27 recites “code for mapping addresses of said edited source file and said related files associated with said display of said Web page to an address location commensurate with said file transfer server.” The Examiner’s response contains similar arguments as those previously presented. *Examiner’s Answer* at p. 24. Again, *CuteFTP* does not disclose mapping addresses of an edited source file and related files associated with the display of a Web page to an address location commensurate with a file transfer server, as recited in claim 27. Further, the Examiner does not rely upon *XML Spy* as teaching or suggesting these elements, and Appellant asserts that it does not. Therefore, the combination

of *Cute FTP* with *XML Spy*, even if proper, does not teach or suggest every element recited in claim 27. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claim 27.

6. Dependent Claim 31

Dependent claim 31 recites “code for stripping said modifications to said one or more elements from said edited source responsive to said checking; and code for updating said database with said modifications.” The Examiner’s response contains similar arguments as those previously presented. *Examiner’s Answer* at p. 24. Again, *CuteFTP* does not disclose stripping modifications to one or more elements from an edited source responsive to a checking step and updating a database with the modifications, as recited in claim 31. Further, the Examiner does not rely upon *XML Spy* as teaching or suggesting these elements, and Appellant asserts that it does not. Therefore, the combination of *Cute FTP* with *XML Spy*, even if proper, does not teach or suggest every element recited in claim 31. Accordingly, Appellant respectfully requests that the Board overturn the 35 U.S.C. § 103(a) rejection of record with respect to claim 31.

IV. CONCLUSION

In view of the foregoing, Appellant respectfully requests withdrawal of the final rejection, reopening of prosecution, and allowance of the above-captioned application. Should the Examiner not find the comments contained herein persuasive, acknowledgement of receipt and entry of this Reply Brief are respectfully requested. Appellant believes no fee is due with this Reply Brief. However, if a fee is due, please charge Deposit Account No. 06-2380, under Order No. M062 from which the undersigned is authorized to draw.

Dated: July 31, 2007

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: July 31, 2007

Signature: Donna Forbit

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Respectfully submitted,

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